IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 1864 of 1987

For Approval and Signature:

HONOURABLE MR.JUSTICE KS JHAVERI

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BHADRIK RAMANLAL SHAH - Appellant(s)
Versus
KUMARPAL SUMATILAL SHAH & 2 - Defendant(s)

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Appearance :
MR AMAR BHATT FOR MR SN SOPARKAR for Appellant(s) : 1,
None for Defendant(s) : 1 - 2.
MR PF MAKWANA for Defendant(s) : 3,

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CORAM : HONOURABLE MR.JUSTICE KS JHAVERI

Date : 01/08/2006

ORAL JUDGMENT

1. This matter was listed before this Court on 25.07.2006 when the following order was passed:

> "Even in the second call Mr. Makwana, learned advocate for the respondents is not present. Heard Mr. Bhatt for Mr. Soparkar learned advocate for the appellant as a last chance matter to come up on 01/08/2006."

Today when the matter was called out none is present on behalf of the respondents. Therefore matter is taken up for hearing.

2. By way of this appeal the appellant has challenged the judgment and award dated 07.01.1987 passed by the Motor Accident Claims Tribunal No. 4 (Aux.) at Ahmedabad in M.A.C. Petition No. 129 of 1983 whereby the Tribunal awarded an amount of Rs. 7000/- by way of compensation payable to the original claimant by the original opponents jointly and severally.

3. The short fact of the present case are that on 7th November, 1982 the applicant was driving scooter bearing Registration No. GRL 7689 with a side car. At that time, an ambassador car being driven by original opponent no.1 came from the opposite direction in a rash and negligent manner as a result of which, the car dashed on the right side of the scooter. The scooterist therefore was knocked down and sustained serious injuries. He had remained in the hospital as an indoor patient for about 3 days.

3.1 Thereafter, on 20.11.1983 when he was stepping down the staircase, because of the defect in his right knee due to previous accident, he fell from the staircase and sustained serious injuries on the

same portion where he had sustained injuries at the time of previous accident. Therefore, he filed a petition claiming an amount of Rs.50,000/- by way of compensation. The Tribunal after hearing the parties passed the aforesaid award.

4. Mr. Bhatt, learned advocate for the appellant has submitted that the Tribunal has found that the applicant has suffered grievous injuries but Exh. 47 which is the certificate issued by V.S. Hospital, is silent about the fracture on the right knee of the applicant and the same applies to the report of the Radiologist at Exh. 67. He has further contended that the Tribunal ought to have considered the future loss of income shall come to Rs. 27,000/-. He has also claimed a total amount of Rs. 10000/- thereby claiming an additional amount of Rs. 3500/- towards pain shock and suffering.

5. Heard learned counsel for the parties. I have gone through the award of the Tribunal and the material placed on record. The Tribunal has considered the oral and documentary evidence in detail and passed the award. However, the Tribunal has not awarded any amount towards future loss of income. In that view of the matter

looking to the medical disability and the decision of the Apex Court in the case of ***""U.P. State Road Transport Corporation and Ors. Vs. Trilok Chandra & Ors."*** reported in 1996(3)GLR 136, I am of the view that the appellant shall be entitled to an amount of Rs. 18000/- under the head of future loss of income. Moreover, looking to the grievous injury sustained by the appellant and the period of bed rest and medical care, the appellant is further entitled to an additional amount of Rs. 3500/- towards pain, shock and suffering thereby entitling him to a total compensation to the tune of Rs. 21,500/-. Since the Tribunal has already awarded Rs. 7,000/-, the original claimant shall be entitled to an additional sum of Rs. 14,500/-.

6. In the premises aforesaid, the appeal is partly allowed. The appellant shall be entitled to an additional amount of ***Rs. 14,500/-*** alongwith interest at the rate of 6% per annum from the date of application till realisation. The award of the Tribunal is modified to the aforesaid extent. No order as to costs.

(K.S.JHAVERI, J.)

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